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EUCOM FOR LEGAL ADVISOR (COL LIETZAU)
OSD FOR GENERAL COUNSEL'S OFFICE (DAN DELL'ORTO)

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TAGS: PHUM KPAO PREL PTER NL

SUBJECT: DETAINEE POLICY/MILITARY COMMISSIONS: BELLINGER
VISIT BRINGS RESULTS

REF: A. THE HAGUE 2047

1B. THE HAGUE 2024 AND PREVIOUS

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Classified By: Ambassador Roland Arnall; reasons 1.4 (b) and (d).

11. (U) Summary: State Department Legal Adviser John Bellinger visited The Netherlands October 10-12, accompanied by EUR PDAS Kurt Volker and several other senior State and DOD officials. The team met with Dutch Defense, Justice, and Foreign Affairs officials for closed-door talks, answering detailed questions on the new Military Commissions Act (the Act), U.S. interpretations of its obligations under international law, and the future of the CIA interrogation program. Bellinger also spoke to a large audience of Dutch academics, students and human rights activists, and the delegation met with journalists, parliamentarians, and leading opinion makers. Although Dutch policy officials recognize the legal and practical difficulties we face in dealing with terrorism, the visit revealed many misconceptions about U.S. law and policy in the war on terror. While the road ahead remains rough, we are seeing increased recognition that the U.S. is following its legal obligations despite unclear international rules. End summary.

Press Roundtable and Leiden Speech

12. (U) The Ambassador hosted a press roundtable for ten influential Dutch journalists. The meeting, as with each meeting during the trip, focused on the Military Commissions Act. Addressing widespread and misleading press reports, Bellinger and DOD Deputy General Counsel Dan Dell'Orto devoted significant time to explaining the key provisions of the Act, including its fair trial provisions. Subsequent press coverage captured some of Bellinger's main themes - that the U.S. is acting in accordance with international law, for example - marking a significant improvement over previous coverage.

13. (U) Later that day, Bellinger spoke at Leiden University to an audience of scholars, students, and human rights advocates. He laid out the legal framework in which the United States is conducting its armed conflict with al Qaeda, explained the need for military commissions, and challenged

the audience to consider what the Netherlands would do if it were attacked on a scale similar to September 11.

Parliamentary Breakfast

¶ 4. (C) Bellinger, Dell'Orto, and Volker had a working breakfast on October 11 with the parliamentary spokesmen for foreign affairs and justice issues from the Christian Democrat (CDA) and Liberal (VVD) parties, both of the governing coalition parties. The MPs expressed concern that the U.S. was losing the "propaganda, political, and PR" struggle on Guantanamo and detainee issues, making it difficult for parties to be publicly supportive, especially in an election environment. Bellinger and Volker stressed that the U.S. is making a concerted effort to correct misinformation and increase trust, and called on the members to play a responsible part in this effort. Bellinger said the Dutch parliamentarians should consider visiting Guantanamo to judge conditions for themselves, and they responded positively to the suggestion.

¶ 5. (C) The parliamentarians grudgingly acknowledged that current domestic and international laws are poorly suited to deal with the international terrorist challenge. Henk Jan Ormel (Foreign Policy Spokesman for CDA) suggested that the Dutch could hold an international conference to try to reach agreement on how to deal with future challenges. Hans van Baalen (Foreign Policy Spokesman for VVD) argued that such an approach could take decades, while the challenges were immediate. Both agreed that it was only a matter of time before Dutch soldiers -- and others -- involved in international military operations against non-state actors would face similar problems.

Bilateral Discussions with GON

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¶ 6. (C) In bilateral discussions, Bellinger laid out the U.S. view of its conflict with al Qaeda, explaining why the law enforcement framework is not fully adequate; why the United States found it necessary to establish Guantanamo and what hurdles the USG faces to closing it; what legal rules apply to detainees there; and what the Act does. Dell'Orto put the current military commissions in an historical context and described in detail the various fair trial protections for military commissions based on the Act. The U.S. delegation responded vigorously to combat the idea that the USG would use evidence derived from torture in military commissions, and explained the several avenues detainees may use to appeal to federal courts. The Dutch were troubled by the concept of a state of armed conflict with al Qaeda, raising questions about when that conflict will end and how to determine who is a member of al Qaeda.

¶ 7. (C) Comment: The discussions were a useful way to answer Dutch questions and clarify misperceptions. Bellinger urged the Dutch to speak out when the press or the public suggested that the United States was not complying with its legal obligations. The Dutch evidenced an unwillingness to defend U.S. policies publicly but expressed an interest in continuing the dialogue bilaterally. End comment.

Bot Meeting

¶ 8. (C) Bellinger and Volker met privately with FM Bot and POLDIR de Gooijer. Bot agreed that the paradigm of non-state actors captured on the battlefield presented new and unique challenges, noting that "they are neither fish nor fowl." Bot said he was very pleased that the U.S. group had come to the Netherlands for serious discussions on these difficult and complex issues. He stressed that the international community needed to reach agreement on how to deal with these

issues, since states like the Netherlands were likely to encounter similar problems in places like Somalia, Sudan, and elsewhere.

¶19. (C) Bot noted that he had received more than 120 questions from Parliament related to U.S. detainee issues and the Military Commissions Act. He expected additional critical questioning from Parliament in coming weeks, as parties jostled for attention in the lead-up to the November 22 elections. Bellinger and Volker assured him that we would continue to provide as much information as we could to help answer Parliamentary questions and correct misinformation. At the same time, Bellinger and Volker pressed Bot to use his influence domestically and within Europe to help correct current negative views of the U.S. position.

¶10. (C) Pointing to the MOU the Dutch negotiated with the Afghan government over the handling of Dutch detainees in Afghanistan, Bot acknowledged that there is no "completely satisfactory" solution to the current challenges under existing laws. He stressed that it would be useful to conduct a comprehensive review of existing legal frameworks to determine how they might be adjusted to accommodate new realities. He added that The Hague could be a logical place to begin the process of constructing an adjusted framework if necessary. Bot noted that he looked forward to discussing the results of the current talks and other issues when he meets with Secretary Rice on October 23.

¶11. (U) Leading Dutch national daily NRC Handelsblad on October 12 reported that Bot characterized the Military Commissions Act as "steps forward" on Guantanamo. NRC made no mention of the wider detainee issues and quoted Bot as saying that Guantanamo detainees continue to find themselves in a "legal black hole." According to NRC, Bot also said that the Netherlands is prepared to help the U.S. look at ways of updating the Geneva Conventions.

¶12. (U) Bellinger has had the opportunity to clear on this cable.

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